

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

JERRY SAMUEL LINDSEY,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 08-1047
	)	
PHIL SHAFFER, Head Counselor;	)	District Judge Joy Flowers Conti
RICHARD GIGLIOTTI, Warden;	)	
ART MARX, Deputy Warden	)	
	)	
Defendants.	)	

**MEMORANDUM ORDER**

This prisoner civil rights case filed by plaintiff Jerry Samuel Lindsey (“Lindsey” or “plaintiff”) was initiated by the filing of a motion to proceed *in forma pauperis* on July 28, 2008, and referred to a United States Magistrate Judge for pretrial proceedings in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrate Judges.

The magistrate judge's report and recommendation (Docket No. 36), filed on July 12, 2010, recommended that the motion for summary judgment (Docket No. 30) filed by defendants Richard Gigliotti, Art Marx, and Phil Shaffer (collectively, “defendants”) be granted. Plaintiff filed objections to the report and recommendation on August 4, 2010 (Docket No. 37). In these objections, Lindsey asserts that the magistrate judge erroneously considered facts outside the record in recommending to grant summary judgment in favor of defendants. Plaintiff clearly is wrong in this assertion as the magistrate judge found that plaintiff’s allegations, taken as true, did not allege any violation of his constitutional rights as set forth in the appropriate caselaw. The report and recommendation did not consider any facts other than those specifically alleged by Lindsey. Thus,

consistent with the magistrate judge's recommendation, defendants are entitled to summary judgment with respect to plaintiff's claims. Consequently, plaintiff's objections are overruled.

After de novo review of the pleadings and the documents in the case, together with the report and recommendation, and the objections thereto, the following order is entered:

**AND NOW**, this 19th day of August, 2010;

**IT IS HEREBY ORDERED** that defendants' motion for summary judgment (Docket No. 30) is **GRANTED**.

**IT IS FURTHER ORDERED** that the report and recommendation of the magistrate judge dated July 12, 2010 (Docket No. 36), is **ADOPTED** as the opinion of the court.

**IT IS FURTHER ORDERED** that the Clerk of Court mark this case **CLOSED**.

**AND IT IS FURTHER ORDERED** that pursuant to Rule 4(a)(1) of the Federal Rules of Appellate Procedure, Petitioner has thirty (30) days to file a notice of appeal as provided by Rule 3 of the Federal Rules of Appellate Procedure.

/s/ Joy Flowers Conti

Joy Flowers Conti

United States District Judge

cc: Jerry Samuel Lindsey  
Department of Veterans Affairs  
Medical Center  
1700 South Lincoln Avenue  
Lebanon, PA 17042